

**CALIFORNIA COMMISSION ON DISABILITY ACCESS
FULL COMMISSION
MEETING MINUTES**

August 19, 2011

1. CALL TO ORDER

Chair Johnson called the meeting to order at approximately 10:00 a.m. at Department of Consumer Affairs, 1625 North Market Blvd., First Floor Hearing Room, Sacramento, California.

ROLL CALL

Commissioners Present:

Margaret Johnson, Chair
Rocky Burks
Michael Dean, Interim Vice-Chair
Mitchell Pomerantz
Anthony Seferian
Howard "Chip" Smith, Jr.
Betty Wilson

Commissioners Absent:

Tom Ammiano
Connie Conway
Senator Ellen Corbett
Thomas Harman
Richard Luehrs
Mark Martinez
Lillibeth Navarro
Pierce Welch

CBSC Members Present:

Jim McGowan
Stephanie Davis

Also Present:

Sharon Toji, Advisory Committee on Access of the
California State Building Commission (via
teleconference)
Donald Parks, Applied Technology, Inc.
Bill Zellmer, Stafford King Wiese Architects
Steve Dolim, Certified Access Institute
Dave Peters, Lawyers Against Lawsuit Abuse

PLEDGE OF ALLEGIANCE

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Chair Johnson led the Commission in the Pledge of Allegiance.

Chair Johnson was pleased to introduce the new Executive Director, James Vitale. She acknowledged the Building Standards Commission for all the assistance they had given in the last two years.

2. COMMENTS FROM THE PUBLIC ON ISSUES NOT ON THIS AGENDA

Ms. Sharon Toji, Advisory Committee on Access of the California State Building Commission, spoke (via teleconference) regarding the problem that many different departments, commissions, and advisory committees all work separately on code; she herself is a member of three of them. Some kind of mechanism to coordinate the work is badly needed.

Ms. Toji also pointed out that on March 15, 2012 the updated national building code and guidelines are going to be legally enforceable. When 2012 arrives, our new building code is not going to be ready until the following year, and people will have reason to bring lawsuits on items in national code.

Ms. Toji added that knowledgeable and patriotic volunteers must act to help code-writing agencies do their work.

Mr. Donald Parks, Applied Technology, Inc., re-emphasized the issue of information technology accessibility and the need for a more integrated infrastructure. He requested for the CCDA to put these items on a future meeting agenda.

Mr. Bill Zellmer, Stafford King Wiese Architects, reinforced that it's important for those in the design community to have the State reconcile its codes with the March 15 guidelines. In the interim, architects don't know exactly what they are supposed to follow.

3. GENERAL BUSINESS ITEMS

a. Review/Approval of Meeting Minutes

Because a quorum was not present, Chair Johnson postponed addressing the item.

b. New Location for the CCDA

Chair Johnson announced the CCDA's new address as 721 Capitol Mall, Room 260, Sacramento 95814. This location is the second floor of the Department of Rehabilitations building.

c. Executive Director Workplan

New Executive Director James Vitale gave a brief summary of his professional background.

- He was previously with the Division of State Architect (DSA) as the Senior Architect in the Access Compliance Division at the Los Angeles regional office.
- Prior to that, he spent four years in the field at a satellite office in Riverside.
- He is a founding member of the DSA Academy as syllabus developer.

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- He is one of two co-authors of the underlying regulations of the Certified Access Specialist Program (CASP).
- He has been involved in with access codes for the better part of 40 years.

Executive Director Vitale is delving into this job as an opportunity that will benefit all Californians from here on out. He feels that between the Commissioners, the public, and the Legislature, we can resolve a number of the outstanding issues that we as a state have been faced with over the years.

The Commissioners warmly welcomed Executive Director Vitale.

d. Staffing – Status

i. Staff Services Analyst

Executive Director Vitale introduced Ms. Angela Jemmott, an experienced SSA, who has been retained to provide technical support in budgets, financial accounting, preparation of information and reports, and collection of data.

ii. Executive Assistant

Executive Director Vitale stated that the Executive Assistant will be in place no later than the end of September.

Executive Director Vitale recognized Ms. Stephanie Davis of the Building Standards Commission for her help in supporting all the programs and practices of the CCDA. She and Mr. Jim McGowan, also of the Building Standards Commission, had done a fabulous job in welcoming Executive Director Vitale into the CCDA.

e. Space and Services

Executive Director Vitale stated that CCDA has submitted Memorandums of Understanding (MOUs) to the Department of General Services (DGS) to provide the Commission with financial and fiscal accounting, a telephone system, and data systems. One outstanding area of service is the provision of legal support to the Commission; Executive Director Vitale will be entering into negotiations within the next two weeks.

f. CCDA “By-Laws”

Chair Johnson noted that the Bylaws could not be approved until a quorum is present.

Commissioner Burks briefly ran through the Bylaws for everyone. He requested the Commissioners to submit any potential changes within the next month.

The Commissioners discussed individual Bylaws. One addition suggested by Chair Johnson was that the Chair shall approve of appointees to the Subcommittees.

g. Appointment of CCDA Committee Chairs to the Administration Committee

Chair Johnson stated that when the Bylaws are approved, appointments can be made to the Committees.

h. Committee Meetings – Scheduling

Executive Director Vitale requested that when he contacts a Commissioner regarding scheduling meetings, a response within the same day would be much appreciated.

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i. Discussion Regarding Continuing Disabled Access Lawsuits

Chair Johnson commented that this agenda item had been added in order to seek input from the public.

Commissioner Burks remarked that regarding licensing boards requiring continuing education for certified personnel (i.e., architects and engineers), there was a wide spectrum between many requirements and no requirements at all. At the California State Architects Board, there is no requirement for accessibility compliance continuing education at all. AB 1608 implemented a 1.5 hour requirement under the Americans with Disabilities Act (ADA). This explains some of the problem of continuing lawsuits.

Executive Director Vitale responded that a directive of this Commission is to take these identified shortcomings, and bring forward to the Legislature a report documenting and requesting that they be addressed in future Legislative language.

He also pointed out that CASP is a voluntary, rather than mandated, certification program. This is the disconnect between CASP and SB 1608, which is a mandated, required program that requires the use of voluntarily certified CASP to administrate.

Mr. Steve Dolim, speaking on behalf of the Certified Access Specialist Institute (CASI), stated that his organization would be continuing its work as a resource for the CCDA. He agreed with Commissioner Burks that there is a tremendously wide range of continuing requirements that, from a licensure viewpoint, are not well-amalgamated across the different professions. It bears on the Commission to influence those individual licensing boards within the State.

Commissioner Burks commented that the CASP program, run by the DSA, has a qualifications check cost of \$500, a test cost of \$800, and a certificate cost of \$300. These fees may be prohibitive for licensed architects and engineers, who are already documented to be able to design for clients.

Mr. Dolim said that in the last year and a half or so, he has seen the voluntary aspect of CASP to be good. Its benefits to the public have to be proven so CASP can gain wide acceptance.

Mr. Zellmer noted that accessibility is one small piece of the picture for architects. They also must deal with green design, fire safety, hospital design, school design, and building codes, so they just don't get into accessibility that deeply.

Commissioner Pomerantz remarked that architects are pressed for time and are working from a set of priorities. Accessibility isn't given the level of prioritization that those on this Commission feel that it requires.

Executive Director Vitale spoke of the process involved in a construction project: it begins with the architect, transitions to the agency that reviews the work product for permits, and goes to the contractor in the field for interpretation. Within those three separate parties there should be a system of checks and balances.

The system is there, but it is broken when the contractor diverges from the project design, and the design professional has no legal responsibility for the contractor's failure to

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comply. Therein lies the breakdown. Across the board there is a need for more disability awareness from all parties in the process.

Mr. Dave Peters, Lawyers Against Lawsuit Abuse, stated that his group was involved in a review of 100 properties across the state that had been sued in ADA access lawsuits dating back to 2000. They found that of those 100 properties, only two were not likely to be sued again in ADA lawsuits. It was troubling to see that for a surprising number, no changes had been made whatsoever.

One of the reasons this occurs is that for some of the “mega-filers,” if you pay them the right price, you can obtain an agreement that requires you to make absolutely no changes whatsoever. It will usually include confidentiality provisions so that no one can find out the terms of the agreement.

Mr. Peters added that in looking at over a hundred CASP inspection reports throughout the state, he had never seen one that told the defendants everything they needed to know to avoid these claims. He noted that the guidance in the CASP reports, however, is helpful.

4. BUDGET

a. Fiscal Year 2011/2012 Budget

Executive Director Vitale stated that at present CCDA is operating under the FY 11/12 budget, which has funding of \$454,000 appropriated by the General Fund to establish this Commission. This money has hardly been tapped because of Executive Director Vitale’s late appointment.

The CCDA has drawn down about \$50,000 in capital improvements to its new offices. Staffing costs are well within the budget.

b. Status of Budget Change Proposal (BCP) for Fiscal Year 2012/2013

c. Contracts with Department of General Services (DGS) – Update

CCDA will be going back to DGS with a revised budget request that we hope will be in the range of the original 2010/2011 budget request for \$494,000. Given the overarching reach of the Civil Rights Act and ADA, and given the small numbers being requested, Executive Director Vitale hoped for approval of the budget number CCDA ultimately requests.

5. COMMITTEES:

a. Committee Reports by Committee Chairpersons

- **Accessibility Checklist Committee**

Commissioner Burks reported that the committee’s last meeting was in March of last year. At that meeting, the RAP checklist was put together, which was a revision of a checklist previously prepared by the DSA for other purposes. The RAP checklist is undergoing further review to address private sector duties and responsibilities with regard to application of the Building Code.

- **Administration Committee**

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Chair Johnson reported that the committee has been meeting and handling day-to-day business, e.g., reviewing the Bylaws so they could come before the whole Commission. Most of the Committee's work concerns protocol issues. The Committee is in the process of developing protocol for the Commission to take positions on legislation.

- **Accessibility Enhancement Committee**

The Chairperson was not present.

- **CASP & Education Committee**

Commissioner Burks reported that the committee last met in March. He addressed the issue of the fees for CASP licensure, and expressed the hope that CASI would play an integral role with the Commission to look towards CASP membership for feedback.

Commissioner Burks then supplied some numbers regarding CASP testing. He commended Commissioner Smith, who is also the Acting State Architect, for stepping in to ensure that a pool of new questions was used in the ongoing testing.

- **Civil Enforcement Committee – Senate Bill 1608 Brochure – Joint Development**

Commissioner Dean reported that the committee had last met on November 16. They had discussed the scope of the committee; in examining the effectiveness of Civil Code Section 55.54, they found that their scope would also include the general concept of litigation abuse.

Commissioner Dean also reported that the committee had been given an ADA brochure to review; it was developed by the Consumer Attorneys of California specifically about 1608. The committee received public comments on the brochure which Commissioner Dean will summarize and submit to the Commission.

Commissioner Pomerantz commented that he had heard a fair number of comments stating that, given the charge of 1608, having the CCDA's name attached the brochure might be seen as taking sides. Because of the newness of the CCDA, we might think long and hard before endorsing anyone's brochure. Chair Johnson agreed.

Commissioner Dean suggested that instead of writing a report for the Commission, he could take up the subject at the next committee meeting. Chair Johnson concurred.

Committee Membership – Review of Membership

Chair Johnson reiterated that the bylaws need to be in place in order for Commissioners to discuss this topic.

6. DISABLED ACCESS LEGISLATIVE AND REGULATORY DEVELOPMENTS:

a. Legislation Overview – AB 410, SB 783 and HR 881 – Executive Director

Executive Director Vitale provided an overview of the legislation, as follows.

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- HR 881 is federal legislation being sponsored by Congressman Duncan of California. It is presently stalled in Committee, but has picked up four additional signatories from California. It is the ADA Notification Act of 2011, asking for a 90-day pre-notice of any attempt to file an action against an individual for non-compliance.
- AB 410 is State legislation requesting to provide narrative descriptions of adoptive regulations – among the sight-impaired community there is a need to know the contents of bills. The bill has passed and is now in the Assembly Committee on Fiscal to examine its fiscal impact. It is common-sense legislation and is expected to move on unopposed.
- SB 783 is State legislation that mirrors HR 881, that calls for a time-to-respond extension. This bill has been defeated in the Assembly.

b. Division of the State Architect – Title 24, Chapter 11B Rewrite – Commissioner Smith, DSA

Commissioner Smith began by stating that the current regulations for accessibility and public accommodations are contained mostly in Chapter 11B of the Title 24, Part 2, commonly known as the California Building Code. The DSA has embarked over the past six or seven months in planning a significant update, taking into consideration the new 2010 federal ADA standards that go into mandated effect on March 15, 2012.

Towards that end, the schedule would produce a 2013 California Building Code that would be effective January 1, 2014. It would be published and available to the public no later than July 2013. Between now and the end of next year we hope to have a comprehensive code package developed and approved through the Commission's code adoptive process.

DSA's legal department is fully engaged in order to address the civil rights aspect, somewhat driven by the federal standards and their enforcement. This will help DSA to produce a credible and successful code development process. These legal resources will help DSA assess the current law, i.e., Government Code 4450.

Within the Field Act Advisory Board, there is an Accessibility Committee; Commissioner Smith mentioned that perhaps it could be larger.

DSA will be implementing public outreach through its website as well as Advisory Board public meetings at scheduled intervals.

7. FUTURE AGENDA ITEMS

Commissioner Burks expressed interest in bringing forward the U.S. Access Board's Proposed Public Rights-of-Way Guidelines. The guidelines first began in 1999 and have been updated twice. Now we actually have a released document, and the Commission might want to weigh in on its contents.

Commissioner Dean expressed the need for the CCDA to renew and set priorities, particularly in regard to its obligations through the legislation:

1. Adoption of the bylaws

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2. Staffing of the committees

Commissioner Pomerantz requested a briefing from Commissioner Smith regarding how the code cycle is established.

Commissioner Wilson expressed interest in developing a statewide internship program. She knew of at least five universities and colleges that are interested in having their students participate in various areas around the whole state.

Ms. Lisa Cooley, California State Council on Developmental Disabilities, suggested an agenda item regarding sending the Accessibility Checklist, or some version of it, to employers throughout Sacramento and maybe the state.

8. ADJOURNMENT OF CCDA MEETING

Chair Johnson requested to adjourn the meeting in memory of Ms. Laura Williams. She was an articulate advocate for disability rights, and the CCDA will sorely miss her presence at meetings such as this one.

Executive Director Vitale stated that as Past Secretary for the California Disability Rights Foundation, he had the privilege of knowing Ms. Williams for about five years. She was as much a visible presence as a vocal presence for the rights of individuals with disabilities. Her entire life was involved in that representation, serving as president of Californians for Disability Rights (CDR).

He requested a moment of silence in her honor.

Commissioner Burks stated that Ms. Williams would have looked to the Commission to continue her efforts. One major issue for the Commission to address that was important to her is the Caltrans Building in Los Angeles.

Commissioner Pomerantz reminisced about Ms. Williams' reaction to the construction of the Caltrans Building. He agreed that this issue should be pursued in her memory.

Chair Johnson adjourned the meeting at approximately 2:05 p.m.